

TED DILDAY

IBLA 81-356

Decided July 30, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 42835 through I MC 42850.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Deficiencies under the regulations in the content of an affidavit of assessment work or notice of intention to hold filed with the Bureau of Land Management with respect to an unpatented mining claim may be considered curable and do not result in a conclusive presumption of abandonment of the claim where the filing meets the requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

56 IBLA 337

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Ted Dilday, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ted Dilday appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 16, 1981, as later modified by a decision dated February 12, 1981, declaring the appellant's unpatented mining claims, I MC 42835 through I MC 42850, abandoned and void for failure to properly file evidence of assessment work or a notice of intention to hold the claims as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulations at 43 CFR 3833.2 and 43 CFR 3833.4(a).

Appellant's mining claims were located on September 1, 1979, and recorded with BLM on October 24, 1979. In its decision dated

January 16, 1981, BLM erroneously declared appellant's mining claims abandoned and void because he failed to file notice of intention to hold the subject claims or evidence of assessment work on or before October 22, 1979. For unpatented mining claims located after October 21, 1976, section 314 of FLPMA and the regulations adopted thereunder require filing with BLM of a notice of intention to hold or proof of assessment work on or before December 30 of the year following the year in which the claim was located --December 30, 1980, in this case. 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(c). When the error in this decision was brought to the attention of BLM, an amended decision of February 12, 1981, was issued modifying the earlier decision. The latter decision stated in part:

Your Notice of Intention to hold your unpatented mining claims was not filed properly. In order to have a valid Notice of Intention, you should have filed a copy of a letter signed by the owner and recorded in the county recorder's office. * * *
Your Notice of Intention did not include the statements as set forth in [43 CFR 3833.2-3(a)(1)(iii), (iv), and (v)].

Reference to the case file discloses that the documents submitted by appellant as notices of intention to hold are copies of lists supplied to him by BLM which give the names and corresponding serial numbers assigned to each of his 16 Wooden Nickel claims. In the upper right-hand corner appellant's name and address appear in script. At the bottom of the same page someone, presumably appellant, has printed "INTEND TO HOLD." There is no indication on the documents themselves that they have been recorded in the county recorder's office.

Appellant asserts in his statement of reasons for appeal that no proof of labor was required to be filed with BLM for the subject claims for the assessment year from September 1, 1979, to September 1, 1980, because under the mining law assessment work is not required until the first assessment year commencing after location of the claims which would be the assessment year running from September 1, 1980, to September 1, 1981. Further, appellant alleges that notice of intent to hold was not applicable because no deferment of assessment work was involved. Appellant contends that the copies of the location notices recorded with the county recorder's office should be accepted in lieu of proof of labor or notice of intention to hold for the discovery year.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides in pertinent part, that:

The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

Thus, claimant is required by statute to file with the local recording office where the notice of location is recorded either a notice of intention to hold the claim or an affidavit of assessment work and, further, to file in the proper BLM office a copy of the instrument filed in the local recording office prior to December 31 of the year following the calendar year in which the claim was located. The notice of intention to hold filed with BLM must be an exact legible reproduction or duplicate of the instrument filed for record in the local jurisdiction of the state where the claim is located and recorded. 43 CFR 3833.2-3; Pacific Coast Mines, Inc., 53 IBLA 200 (1981). Although the notice which appellant filed with BLM is defective for failure to include a statement that the claim is held and claimed for the valuable mineral contained therein, a statement that the owners intend to continue development of the claim, and the reason that the annual assessment work has not been performed, as called for by the regulation at 43 CFR 3833.2-3(a)(1)(iii) through (v), these requirements go beyond the requirements of the statute and the deficiency is in the nature of a curable defect which would not support a conclusive presumption of abandonment under section 314 of FLPMA. See Topaz Beryllium Co. v. United States, Civ. No. 79-2255, slip op. at 6 (10th Cir. May 21, 1981); Feldslite Corporation of America, 56 IBLA 78, 81-82, 88 I.D. (1981). However, in cases such as this one where it is clear the notice submitted was not a copy of a notice of intention to hold the claim filed in the local recording office as required by the terms of the statute, the statutory filing requirements have not been complied with and the claim is conclusively presumed abandoned under section 314 of FLPMA. See Pacific Coast Mines, Inc., *supra* at 202.

[2] It is true, as appellant alleges, that the mining law does not require performance of assessment work until the assessment year commencing on the first day of September succeeding the date of location of the claim. 30 U.S.C. § 28 (1976). Thus, appellant was not required to perform assessment work until sometime during the year running from September 1, 1980, to September 1, 1981. However, this does not obviate the necessity for compliance with section 314 of FLPMA requiring filing of either an affidavit of assessment work or notice of intention to hold with both the local recording office and BLM by December 30 of the year following the calendar year in which the claim was located. See Silvertip Exploration & Mining, 43 IBLA 250, 252 (1979); Charlie Carnal, 43 IBLA 10, 12 (1979). The filing with BLM of a copy of the location notice filed with the local recording office cannot suffice as a notice of intention to hold the claim. Don Sagmoen, 50 IBLA 84, 86 (1980).

Therefore, pursuant to the authority delegated to the board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge